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M. Volger  
cis-Peter

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-189663

**DATE:** November 23, 1977

**MATTER OF:** Patrick L. Peters -- Claim for Retroactive Compensation While Performing Higher Level Duties

- DIGEST:**
1. Employee who claims he performed duties of higher level position which was vacant for 7 months seeks backpay. General rule is employee is entitled only to salary of position to which appointed, regardless of duties. Employee should have appealed alleged improper classification to Civil Service Commission under 5 C.F.R. Part 511, Subpart F.
  2. Employee's claim for higher pay while performing higher level duties is distinguished from Turner-Caldwell decisions involving claims for temporary promotions during extended details. In this case the employee was not officially detailed, he did not possess qualifications for higher level position, and he did not meet time-in-grade requirement of Whitten Amendment.

This action is in response to the appeal by Mr. Patrick L. Peters of the settlement by our Claims Division dated June 7, 1977, denying his claim for retroactive compensation for performing higher level duties during the period March 8, 1976, through October 29, 1976, while employed by the U.S. Naval Ammunition Depot, McAlester, Oklahoma.

The record indicates that on March 27, 1976, the position of Electrical Engineer, grade GS-11, was vacated when the incumbent accepted a position in Alaska, and that position was not filled until October 31, 1976. The administrative report states that while the grade GS-11 position was vacant no one requested that Mr. Peters, an Electrical Engineering Technician, grade GS-7, assume the duties and responsibilities of the grade GS-11 position. The report states further that the electrical engineering workload was negligible during this period and that the three tasks Mr. Peters was requested to perform during this period were within the scope of his position description.

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The Claims Division settlement denied Mr. Peters' claim since the additional tasks he performed while the grade GS-11 position was vacant were within the scope of his position description and since a temporary promotion from grade GS-7 to grade GS-11 would be contrary to the provisions of what is commonly known as the Whitten Amendment. On appeal Mr. Peters disputes the agency report as to whether there was a necessity to fill the vacancy in the grade GS-11 position, whether he was asked by his superiors to perform the duties of the higher level position, and whether he actually performed higher level duties.

The general rule in a case such as this is that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. William L. Rivera, B-173783.140, March 22, 1977; and James H. Marshburn, B-180144, October 20, 1976. Unless and until the employee's position is reclassified to a higher grade and the employee is promoted to that position, he is not entitled to the higher salary. See Rivera and decisions cited therein. As we stated in Edward Rothenberg, B-187234, December 8, 1976, the proper course of action for Mr. Peters to follow would have been to appeal the classification of his position to the Civil Service Commission. See 5 C.F.R. Part 511, Subpart Y (1977). However, if the position were reclassified to a higher level and the employee was promoted, the higher salary rate would not be retroactively effective. See Marshburn, supra.

Our Office has held in recent decisions that employees who are officially detailed to higher level positions for an extended period of time are entitled to a temporary promotion on the 121st day after the detail commenced. See Reconsideration of Turner-Caldwell, 55 Comp. Gen. 427 (1977) and decisions cited therein. Those decisions are distinguishable from the present case since Mr. Peters was not officially detailed to perform the duties of the higher grade position. Furthermore, the administrative report states that Mr. Peters did not possess the requisite engineering degree or equivalent experience to qualify for the higher level position. Finally, as noted in the Claims Division settlement, Mr. Peters had not completed the requisite time-in-grade as required under the provisions of section 1310 of the Act of November 1, 1951, 65 Stat. 757-8, as amended, 5 U.S.C. § 3101 note, commonly known as the Whitten Amendment.

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Accordingly, we sustain the determination of our Claims Division denying Mr. Peters' claim for backpay.

*P. J. Keller*  
Deputy Comptroller General  
of the United States